



The Florida Senate

Interim Project Report 2002-103

October 2001

Committee on Agriculture and Consumer Services

Senator Steven A. Geller, Chairman

REVIEW OF PROGRAMS PERTAINING TO THE INTERCEPTION AND ERADICATION OF AGRICULTURAL PESTS AND DISEASES IN THE STATE

SUMMARY

Florida's tropical and semi-tropical climate makes it vulnerable to infestation by numerous agricultural pests and diseases. There is reason for concern that existing plant and animal protection and quarantine resources and penalties are not sufficient deterrents to illegal or undetected imports of animals and animal products, fruits, vegetables, and plants that are hosts to plant and animal pests and diseases. The state's recent experiences with the Mediterranean fruit fly and citrus canker would indicate that these concerns are highly justified. In the past five years, over \$452,509,347 has been spent by the state, federal government, and agricultural industries to eradicate agricultural pests and diseases and millions of dollars have been spent on research. These eradication expenses alone do not reflect the full impact of the infestation. The full impact must include lost production and lost opportunities to market products in domestic and foreign markets. Further, the costs of controlling and eradicating pest and disease outbreaks are ultimately borne by consumers in the form of higher grocery costs.

In recent years, the influx of foreign agricultural imports and international travelers has overwhelmed state and federal inspectors at Florida points of entry. Efforts are being made to make state and federal systems more efficient, but many impediments prevent success in catching agricultural pests and diseases before they become established and require the state to begin costly eradication efforts.

In 1998, the Legislature created the Agricultural Emergency Eradication Trust Fund (AEETF) to enable the Commissioner of Agriculture to make funds available to eliminate an agricultural emergency. Section 206.606(1)(c), F.S., requires 0.65 percent of motor fuel taxes to be transferred to the AEETF each year, and s. 570.1912, F.S., provides that an amount equal to the previous year's transfers into the trust fund

be appropriated from the General Revenue Fund. As expensive as it is to prevent agricultural pests and diseases from entering the state, it is even more costly to eradicate them once they get established. Long-term, dedicated funding is needed in order to maintain effective interception and response capabilities for emergency outbreaks of agricultural pests and diseases.

This report provides information concerning Florida's state and federal border control, deficiencies within existing exclusion, detection, and response programs, and the funding needed for improvements. It provides a history of the state's response to the recent citrus canker outbreak and discusses the issue of requiring the Department of Agriculture and Consumer Services to acquire a search warrant before entering private property to look for signs of citrus canker or to remove trees. It also examines how the citrus canker compensation program provided for in the 2001 Legislative budget is working, if it is adequate, and what, if any steps are needed to complete the effort.

BACKGROUND

Favorable climate, location, international trade, cultural habits, agricultural smugglers, tourism, and a \$7 billion diverse agriculture industry make Florida a high-risk sentinel area for exotic pest and disease introduction and establishment. Most people are not aware of the protective measures that are in place to preserve the state's agricultural resources and the struggle for manpower and funding that the various responsible agencies face. Each year, the Agriculture Institute of Florida, Inc., surveys Florida residents to find out what they know and perceive about agriculture. Sixty-four percent of the people surveyed believe they are informed about Florida's invasive agricultural pests and support measures to keep them out of the state, but few of them could actually name examples of such pests.

Florida is continually plagued by recurring outbreaks of exotic pests and diseases and in managing these repeated outbreaks, Florida has incurred an enormous financial burden. Humans are the primary means of introduction of exotic pests and diseases through intentional and unintentional acts. There are three primary routes of entry. Some are intentionally brought into the state for a specific purpose and are allowed to escape or spread in an unexpected manner. Other pests enter the state in or on host plants, or they arrive on shipping and packing material. These pests and diseases multiply so well because there are no naturally occurring pathogens, predators or parasites that can keep the population in check.

In 1998, the Legislature created the Agricultural Emergency Eradication Trust Fund (AEETF) to enable the Commissioner of Agriculture to make funds available to eliminate an agricultural emergency. Section 206.606(1)(c), F.S., requires 0.65 percent of motor fuel taxes to be transferred to the AEETF each year, and s. 570.1912, F.S., provides that an amount equal to the previous year's transfers into the trust fund be appropriated from the General Revenue Fund.

In the 1999 Legislative Session, the Florida Legislature created the Florida Pest Exclusion Advisory Committee to conduct a comprehensive review of Florida's existing and proposed exclusion, detection and response programs. In March 2001, the committee issued a comprehensive report which has been a source for this interim report.

METHODOLOGY

Interviews were conducted in order to obtain information relating to state and federal exclusion, detection and eradication programs. A significant source of information for this report was the Pest Exclusion Advisory Committee Report which was submitted to the Commissioner of Agriculture in March 2001. The advisory committee was created by the Legislature in 1999 to review and evaluate the state's existing and future exclusion, detection, and eradication programs and its partnerships with public and private entities. Site visits were made to the USDA Miami Inspection Station to observe inspections, Miami International Airport Terminal to observe passenger processing facilities, Miami Air Cargo to observe cargo inspections, Miami Mail Facility to observe on-site mail inspections, and to Miami Maritime Cargo to observe on-site maritime cargo inspections.

FINDINGS

Prevention is the easiest and most cost-effective step to protecting Florida's environmental and agricultural resources. Protective measures are undertaken by several agencies charged with regulating and managing agricultural pests and diseases. The Florida Commissioner of Agriculture has called on police and sheriff departments throughout the state to assist both the U.S. Customs and the U.S. Department of Agriculture in keeping illegal agricultural products that could spread animal and plant pests and diseases from entering Florida. State, local, and federal agencies work to form lines of defense with point-of-origin inspections, point-of-entry inspections, field inspections in high risk zones, and regional inspection programs. While these agencies currently work with some level of cooperation, an insufficient number of inspectors, detector dogs, and other staff are some of the reasons pests and diseases are able to enter the state. The following sections highlight the structure of interception currently in place and deficiencies that need to be addressed.

Interagency Structure

United Nations – The Food and Agriculture Organization of the United Nations governs international trade of agricultural products and forms agreements with organizations such as the International Plant Protection Convention (IPPC). The objective of the IPPC is to maintain and increase international cooperation in controlling pests and diseases of plants and plant products and in preventing their introduction and spread across national boundaries. It seeks to standardize entry requirements for plants and plant products using biological justification as a basis.

United States Department of Agriculture's Animal and Plant Health Inspection Service (USDA-APHIS) – The USDA-APHIS is the primary federal agency charged with protecting U.S. animal and plant resources. Providing adequate protection is quite a task, considering that the number of tourists entering Florida is approaching nearly 50 million per year. Among United States airports, the Miami International Airport ranks number one for international air cargo, number two for total air cargo, and number two for international passengers. The increase in smaller international airports around Florida has made it very difficult for the USDA to provide adequate staff in all locations with its limited resources. The Miami Inspection Station is the busiest plant inspection station in the nation, processing 76 percent of all plants being imported into the United States. From October 1, 2000,

to March 31, 2001, the Miami Foreign Air Facility was presented 2,943,841 foreign mail parcels for inspection. In addition, there will be 16,255 foreign maritime ship arrivals and 4,321,466 foreign maritime passenger arrivals in 2001. As the workload for these facilities has increased each year, the resources needed to regulate these activities have stayed about the same.

Until recently, federal laws were contained in a number of separate acts and detailed in the Code of Federal Regulations to govern importation of plants, animals, and plant and animal products from other countries and interstate movement in accordance with federal plant or animal quarantine restrictions. Congress recently passed the Plant Protection Act which condenses eleven statutes into one comprehensive and easily understood authority and enhances the Secretary of Agriculture's authority relating to plant protection and quarantine. One of the most significant things the Act does is provide for a substantial increase in civil penalties that can be imposed on those who bring illegal fruits, vegetables, and other host materials into the United States. Previous levels of civil penalties were not a deterrent and were viewed by many smugglers simply as the cost of doing business. The act regulates the importation and interstate movement of plant pests and authorizes the Secretary of Agriculture to take emergency measures to destroy infected plants or materials. The Florida Pest Exclusion Advisory Committee found that passage of this act has strengthened federal laws governing plant pest exclusion. However, the committee found that federal laws governing animal pest exclusion have weaknesses and need to be revised and strengthened.

The USDA uses scientifically-based pest risk analyses developed by the IPPC when making decisions regarding the importation of plants or plant products. Entry requirements vary depending upon the commodity and the country of origin. In most cases, phytosanitary (plant health) or animal health certificates are required. The United States entry process permits the entry of plants and plant products without phytosanitary certification for non-commercial purposes as long as the products are legally enterable. USDA also conducts preclearance programs in 29 countries for several types of fruit and flowering bulbs that have previously been inspected by USDA employees prior to being exported to the United States. The USDA must follow the laws of those individual countries, so the pre-clearance programs may not all be as effective as desired. USDA monitors compliance with import requirements at U.S. ports of entry by verifying that the correct documents have accompanied

the shipment and by inspecting the shipment for pests or diseases. The USDA notifies the Florida Department of Agriculture and Consumer Services (FDACS) of incoming shipments by mailing copies of the notice of imports. This enables FDACS to conduct a secondary, in-depth inspection at the destination provided the shipment has not been dispersed to other locations.

The USDA's Beagle Brigade is one facet of APHIS' agricultural quarantine and inspection program. The Beagle Brigade is a group of nonaggressive detector dogs and their human partners. They search travelers' luggage for prohibited fruits, plants, and meat that could harbor harmful plant and animal pests and diseases. These detector dogs work with APHIS inspectors and x-ray technology to prevent the entry of prohibited agricultural items by sniffing each piece of luggage. When the dog recognizes an odor, it sits as close to the source of the odor as possible, whether it's something on the passenger or something in their luggage. The officer then asks the passenger whether he or she is carrying agricultural products and then examines the Customs declaration card to see if any items are declared. A notation is put on the Customs declaration card in green ink so the passenger's baggage will be inspected by a Plant Protection and Quarantine officer before the passenger leaves the area. If "yes" is checked on the declaration card in response to inquiries about carrying food or other agricultural items and a prohibited item is found, the item is confiscated but no civil penalty (fine) is levied. If the response is "no" and contraband is found, the passenger may be fined on the spot.

The USDA has indicated that a turf war exists between USDA inspectors and US Customs inspectors. US Customs inspectors strive to get people through the inspection lines as quickly as possible and sometimes push away USDA inspectors in order to prevent long lines.

USDA-APHIS, Plant Protection & Quarantine currently has 345 positions working at ports of entry on exclusion and throughout the state on fruit fly detection activities and plant pest survey. Twenty-five positions will be added in the upcoming year. The annual budget for these activities is approximately \$22,328,149. USDA-APHIS, Veterinary Services has 52 positions and an annual budget of \$4.6 million. The USDA collects approximately \$35 million in user fees a year in Florida.

Services (FDACS) – FDACS is the primary agency charged with protecting Florida animal and plant resources. Movement of plants, animals, and plant and animal products into Florida from other states and their intrastate movement is governed by specific chapters in the Florida Statutes and rules under the Florida Administrative Code. FDACS permits the entry of plants and animals from other states. Plant products, such as fruits and vegetables, may need a certificate of inspection depending upon the state of origin and any pest concerns, but certificates are not required for most produce. In the case of plants and plant products, a certificate of inspection does not necessarily mean that the individual shipment was inspected; it may only mean that the nursery or farm is under a routine inspection program for pests and diseases. Domestic animals entering Florida from other states are monitored for identification of origin and specific health status of the animals. Animals must be accompanied by an Official Certificate of Veterinary Inspection that is issued by a licensed and accredited veterinarian of the state of origin. A permit is required on some types of shipments.

The FDACS Division of Plant Industry has 165 positions that spend approximately 45 percent of their time on plant pest exclusion activities; however, the percentage may decline by 12 percent during times when response to exotic pest outbreaks is necessary. The annual budget for these activities is estimated at \$3.25 million. The FDACS Division of Animal Industry has 7 positions working on animal pest and disease exclusion for an estimated annual budget of \$304,196.

The Office of Agricultural Uniformed Law Enforcement, Uniformed Operations, has 172 staff positions to manage and staff 22 agricultural inspection stations located on every paved highway crossing the Suwannee and St. Mary's Rivers. These agricultural inspection stations are operated 24 hours a day, 365 days a year. In a 1998 legislative review of the Agricultural Inspection Station program, DACS had 189 staff positions. This decrease in staff reduces the efficiency of the program because at times, the inspection stations become veritable parking lots, and it becomes necessary, for safety purposes, to either close a station to new traffic or to "wave on" vehicles that are waiting to be inspected to prevent dangerous backups on the inspection ramps. All trucks, motor vehicles with trailers, vans, and pick up trucks without visible access to their cargo area are required to stop and submit to an agricultural inspection at these stations. The stations verify certification status, reject non-

enterable shipments, and notify the respective divisions of the shipment in case follow-up inspection is needed. The Agricultural Inspection Station reports are either mailed or faxed depending on the shipment's state of origin. This permits follow-up inspections if needed at the point of destination, provided the shipment has not been dispersed. In cases where there is a pest concern, the truck may be returned to origin or required to enter under seal, which can only be removed at the destination by an authorized FDACS representative. Over 10 million inspections are conducted annually and by the year 2002, 12 million inspections will be performed.

From July 7, 2001, to July 13, 2001, FDACS, USDA, the Florida Department of Community Affairs, Florida Fish and Wildlife Conservation Commission, and Alachua and Volusia County Emergency Managements conducted a foreign animal disease training exercise simulation modeled after foot-and-mouth disease. One of the objectives of the exercise was to test integration of state and federal response personnel. The working relationship between FDACS and the other responders was found to be exemplary. Strengths and weakness of the exercise are being analyzed and an integrated structure will be defined that includes state, federal, and local resources within the state of Florida.

U.S. Fish & Wildlife Service and Florida Fish & Wildlife Conservation Commission (FWC) – Both agencies have responsibilities for protecting native animal species from the introduction of exotic pest species. Anyone importing exotic animals or reptiles must have appropriate licenses from the FWC, and if they import insects or other arthropods, they must have a permit from FDACS. Establishments receiving these three species are monitored for compliance with the terms of the permit or license.

The FWC has 12 positions dedicated to inspection and the exclusion of exotic species. It has an estimated expense budget of \$100,000 a year.

Smuggling Interdiction

Agricultural smugglers place Florida's agriculture, economy, environment, and food supply at risk. The United States Department of Agriculture's Animal and Plant Health Inspection Service (USDA-APHIS) takes the first protective measures to intercept an increasing number of plant pests and infested agricultural products in Florida that could destroy ecosystems and agriculture across America. APHIS has developed cooperative initiatives with other federal and state agencies to enhance pest exclusion efforts. In Florida,

the primary APHIS cooperator is the Florida Department of Agriculture and Consumer Services. APHIS and DACS formed the Florida Interdiction and Smuggling Team (FIST), a group of specially trained officers from federal and state regulatory agencies to identify and close smuggling pathways. The FIST is able to determine what types of prohibited agricultural commodities are being smuggled into Florida using market surveys, inspections and blitzes. In addition, the FIST can begin to identify the pathways by which the smuggled commodities traveled from the initial points of entry, to the primary U.S. distributors, to Florida, and to the marketplace. In backtracking from the marketplace to the importers, the FIST is able to identify and effectively shut down the pathways.

Public Education

The USDA, FDACS and the Florida Fish and Wildlife Conservation Commission use what resources they have available to educate visitors and commercial shippers, residents and agricultural producers about the importance of interception and eradication of agricultural pests and diseases. Lack of communications expertise and resources to launch massive educational campaigns reduces the effectiveness of their efforts. They rely on top department officials and a handful of public relations

staff members to handle questions from the public, the media and local governments. Through education and partnership with the airlines, APHIS has found amnesty bins at the Miami International Airport to be a means of slowing down the movement of “backyard citrus” into other parts of Florida, citrus producing states, and other countries. Public education campaigns on cruise ships and by the airlines would help passengers understand the potential dangers of entering the state with foreign plants and agricultural items.

Funding

As expensive as it is to prevent agricultural pests and diseases from entering the state, it is even more costly to eradicate them once they get established. Long-term, dedicated funding is needed in order to maintain effective interception and response capabilities for emergency outbreaks of agricultural pests and diseases. Program readiness must be maintained at all times. The following table illustrates the financial impact that control and eradication has had on the state, federal government, and the industry in the past five years.

Plant/Animal Pest/Disease	State Costs for Control/Eradication	USDA/Federal Costs for Control/Eradication	Industry Costs for Control
Citrus Canker	\$111,669,705	\$125,376,350	\$29,000,000
Medfly	22,468,344	22,500,000	
Thrips palmi			20,000,000
Brown Citrus Aphid	226,882		30,000,000
Citrus Leafminer			32,000,000
Oriental Fruit Fly	205,000	175,000	
Sweet Potato Whitefly			22,000,000
Pine Shoot Beetle	10,076		
Leatherleaf Fern	775,000		33,000,000
Anthracnose			
Equine Piroplasmiasis	40,000		
Heartwater Disease	1,115,200		
Tropical Soda Apple	1,197,790		
Tomato Yellow Leaf Curl			750,000
TOTALS	\$137,707,997	\$148,051,350	\$166,750,000
Total Five-Year Costs	\$452,509,347		

Source: Florida Department of Agriculture and Consumer Services
Estimated for Fiscal Year 1995/96 through 9/30/01

Canker Compensation Program

In the 2001 Legislative Session, the Legislature passed Senate Bill 1922 which authorized the Department of Agriculture and Consumer Services to administer a compensation program for residential citrus trees

removed as part of the Citrus Canker Eradication Program. Compensation was set at \$100 per tree subsequent to the \$100 Shade Florida Program voucher. Payments are limited to citrus trees removed by one of the contractors hired by the state. FDACS is

in the process of getting legislative approval to proceed with the compensation program.

While it is not possible to gauge the public's reaction to the compensation program until the checks are actually sent out, many of the calls to the Citrus Canker Helpline are from residents inquiring about the program and what they need to do to participate. From July 1, 2001, to the end of August, the helpline has received 1,107 calls from residents asking for details about the program.

Effect on Eradication Efforts If A Search Warrant Is Required

The following is a synopsis of lawsuits that have been filed concerning the citrus canker eradication program and whether the state should be required to have a search warrant before entering residential properties to look for citrus canker and to remove canker-infested trees.

1. The Fourth Amendment issue was briefly raised by Broward County in its lawsuit against the Florida Department of Agriculture and Consumer Services in Judge Leonard Fleet's court in November, 2000. Judge Fleet was silent on the matter when he issued his order granting Broward County an injunction against the cutting of citrus trees that lie within 1900 feet of infected trees. The Department in its briefs to the Fourth District Court of Appeal talked about why the Fourth Amendment was not applicable in this case. When the Fourth District Court of Appeal overturned Judge Fleet's ruling in June of this year, the appellate court did not address the Fourth Amendment issue.
2. Miami-Dade County and the city of North Miami sued the Florida Department of Agriculture and Consumer Services in Miami-Dade Circuit Court in March 2001 over the issue of search warrants. The Plaintiff's lawsuit said the Department must have search warrants to enter properties to look for citrus trees infected with citrus canker and to remove the trees.
3. Judge Ronald Friedman ruled in favor of the plaintiffs and issued an injunction prohibiting the Department from entering any residential properties in Miami-Dade County. Judge Friedman agreed to allow the Department to remove known infected trees with the written consent of homeowners.
4. The Department appealed Judge Friedman's

- ruling to the Third District Court of Appeal.
5. In July, the Third District Court overturned Judge Friedman's ruling and ordered the injunction lifted immediately. The appellate court did not rule on the merits of the suit but instead said the plaintiff's did not have standing to sue over Fourth Amendment rights. However, in a concurring opinion, one of the appellate judges wrote that the statute upon which the Department relies to enter properties is constitutional. (581.031(15)(a), F.S.)
 6. The Third District Court of Appeal has denied the Plaintiff's request for a re-hearing on this matter.
 7. In August 2001, 18 homeowners filed a lawsuit in Broward Circuit Court on Fourth Amendment grounds. No date has been set for a hearing.

It is the position of the Department of Agriculture and Consumer Services that Florida law gives the Department the authority to enter private properties to "inspect for and remove plant pests and diseases" (s. 581.031(15)(a), F.S.). The Florida Legislature anticipated the need for quick and decisive action when state agriculture is threatened with a plant pest or disease. Citrus canker has spread considerably since FDACS was halted by a Broward county court in November, 2000 from cutting citrus trees that lie within 1900 feet of infected trees. At that time, it was estimated that there were 80,000 trees left to be removed. That number has grown to nearly 200,000 due to the spread of the disease and will continue to grow as a result of delays. The need to obtain search warrants would only further extend the delays and aid in the spread of canker.

RECOMMENDATIONS

Providing sufficient resources must involve determining who bears the heaviest responsibility to pay for the costs of control and eradication. Is it the people creating the problem, the people benefiting from the industry, the state as a whole, or the federal government? Listed below are options for consideration.

1. Put in statute a specific, yearly General Revenue deposit into the Emergency Eradication Trust Fund.

2. Require some of the unpaid taxes collected in the Bill of Lading Program by agricultural inspection officers at inspection stations to be returned to FDACS.
3. Require a portion of USDA user fees to be returned to Florida.
4. Require a portion of USDA fines to be appropriated back to Florida.
5. Increase the portion of Agricultural Quarantine Inspection user fees that are collected by USDA in Florida.
6. Determine specific pest pathways and impose risk based fees.
7. Increase dockage and wharfage fees.
8. Restructure dockage fees for cruise ships.
9. Increase the petroleum inspection fee.
10. Increase the amount deposited into the Emergency Eradication Trust Fund from unclaimed gas taxes.
11. Create a commodity tax on Florida agricultural products.

As was experienced in the emergency training exercise for foot and mouth disease conducted in July, cooperation between state and federal organizations is necessary for successfully safeguarding Florida's plants, animals, and natural resources. The relevant organizations must communicate more effectively and create links to facilitate quick response to emergencies or even routine problems.

Public education programs should be intensified to inform the public of the importance of obeying current laws and how they can help eliminate the need for eradication programs.

FDACS, USDA, and the Florida Fish and Wildlife Conservation Commission should be provided with additional positions and resources in relation to the yearly increase in workload.

Encourage USDA and the U.S. Fish & Wildlife Service to review federal laws and rules governing animal pest and disease exclusion to tighten and deficiencies.

Use a comprehensive statewide approach to pest risk assessment and solicit cooperation from all relevant organizations.